THE ORGANIZATION OF THE COURTS

By George W. Alger.

Law reform, in certain aspects, has made great progress in the United States in recent years. The advance has been uneven, however, and one of the principal subjects of necessary law reform remains substantially untouched. That is the reform of court organization.

There is no occasion for being discouraged. There are reasons why this essential reform has lagged behind others and when we consider the progress in other lines, we have great reason for satisfaction. If one goes back not more than ten years in a review of the reforms which have taken place in the decade, we will find that on the matter of eliminating technicalities a revolution has taken place in most of our states. The sacredness of the unessential no longer continues. The technical rulings on evidence, the unending line of reversed cases upon rulings upon mere questions of admissibility of particular questions have largely disappeared. The criminal law is far less technical in most of our states. There are a few states, to be sure, where the exchequer heresy of 1830 has not given place to the orthodox English rule that an erroneous admission or rejection of a piece of evidence is not ground for setting aside the verdict and ordering a new trial, unless, upon all the evidence it appears to the judges that the truth has not been reached. But these states are very few; state after state has adopted by statute the old English rule long ago reasserted in England in the Judicature Act of 1875 and perfected by the statute of 1883. Even in states where no statute on this score has been enacted, the courts have themselves fallen in line with the modern spirit of revolt against meticulous technicality. Criminal law has rid itself in America of a substantial part of the blot of erudite uncertainty which gave palliation, almost excuse, for lawlessness and lynch law.

Procedural reform continues to receive in all progressive American states a painstaking attention from the bar which it did not receive prior to the last decade. This work is very difficult. I am inclined to think that the concentration of attention which has

been devoted to reform of procedure by leading members of the bar and bench is a substantial reason why so little progress has been made in the reorganization of the courts themselves. Procedural reform, while enormously important, has dealt largely with matters of detail and highly professional details at that. I am not clear, in my own mind, as to whether it might not have been better in the long run if the question of judicial organization had been the reform measure taken up first. I am inclined to think that we would have made more progress.

I do not wish for a moment to seem to minimize the importance of procedural reform. I fully appreciate it. It is a type of reform which involves an enormous amount of hard, thankless labor from lawyers who love their profession enough to drudge for it. The point I wish to make, however, is this. On the matter of court organization, we should have behind us in our efforts a very considerable body of public opinion, capable of immense assistance in accomplishing the reorganization of the courts. We cannot, on the other hand, expect the layman to be directly and personally interested in the more technical questions of procedural reform. It is a professional and expert matter. It is more or less intricate. It involves questions of good mechanics—the mechanics of justice—questions of jurisdiction, the proper limitation of appeals, the elaboration of practice rules. The layman has of course quite properly assumed an attitude toward these matters, which most of us, unskilled in mechanics, would assume with reference to the movement of a complicated engine. We know the function which the engine is supposed to perform; we know that some engines are better than others, but we do not pretend to know why. We leave it to the engineers who study, devise and build them. We judge them only by what we learn of their results.

Now the disappearance of the technical spirit—noticeable in our criminal law and to an almost equal extent in our civil law—is due, I think, very largely to the demand of the layman. That happens to be a subject on which he need not stand puzzled before a strange machine. It is a subject on which he is qualified to have and to express an opinion and to make that opinion felt. In this matter of the reorganization of the courts, we would not lose sight of the fact that we are again dealing with a subject on which the layman's opinion is important and on which his opinion should be asked,

When we lawyers are able to make clear to the layman that we are endeavoring to solve in connection with the courts a problem of business organization, we will get his attention, his criticism and his valuable and essential support.

What is the matter with the business organization of our courts? I think the summary is accurate and complete which is contained in the report of the National Economic League on *Efficiency in the Administration of Justice*. The report says:

> Three circumstances determined our present American judicial organization: (1) the organization of the English courts at the Revolution; (2) the need of a rapid making-over of English common law and legislation into a common law for America in a period when little could be achieved in such a field by legislation and when the courts alone could be looked to; (3) the demand for the decentralization of the administration of justice and bringing justice to every man's door in the rural American community of the first half of the last century. The result was a system of separate courts, with a fixed staff, not available in any other tribunal, no matter how great the arrears in one or the lack of business in another, a setting-up of a machine for developing the law by judicial decisions rather than for the adjudication of causes, and a system of specialized local courts instead of specialist judges.

I shall not in this paper attempt to project a plan for a perfect court organization; I do not think it is possible to make such a plan adapted to the needs of all our states. The nature of the plan would necessarily be dependent upon varying conditions. An agricultural state, with no large cities, doubtless requires a different organization from a state like New York containing the largest city in the world. There are, however, I think, certain requirements applicable to any state. I endeavored some years ago to express these requirements in business terms, as follows:

> Any business man would say that for the effective operation of a growing business on a large scale, an adequate business organization is essential. Such an adequate organization includes at least an officer or group of officers having power to produce coördination in its various parts and a conscious general plan governing their action; second, a system by which the work done in various branches is carefully checked up so that responsible supervising officers and directors may know what is done and not done and who is entitled to commendation or blame; third, a system by which the time and attention of expensive and important officers are devoted not to details, but to the more serious work of their department; fourth, a system by which through specialization certain officers may become expert in the performance of important work; fifth, a system by which the directors and officers placed in responsible authority are given power in proportion to their

responsibility and are not, for example, handicapped by multitudinous by-laws of stockholders who meet annually; sixth, a clear, intelligent and complete audit or report of proceedings made annually or oftener that the stockholders may know how the stewardship of the officers and directors has been conducted.

There is not a state in the United States whose judicial system can stand the test of these rules of business organization. The systems—so-called for lack of a better name—are still the products of history, an evolution of a study of Blackstone's organization of English courts, plus the demands of a rural community over half a century ago, plus a little patchwork. In England the administrative organization of the courts, quite unlike in many respects anything we are likely to adopt, represents nevertheless a good business organization. The Lord Chancellor is the head of the judicial organization. He has the power of appointing the judges in the Chancery division, Kings Bench division and the Probate, Divorce and Admiralty divisions. These departments or divisions, created by English law, in turn have their responsible administrative heads. There is a president for the Probate, Divorce and Admiralty division. A chief justice is the head of the Kings Bench division and the Lord Chancellor himself is the head of the Chancery division. The Chancellor is a responsible and authoritative administrative officer and supervises every judge, clerk, bailiff and employe in the entire judicial system.

With us, the judicial system, strictly speaking, and the administrative system of the courts are separate and distinct entities. American courts rarely have control over their own clerks. In this country, we have developed at least in our large cities an enormously expensive administrative system in our courts, so that the salary list of a clerical force is often greater than that of the judicial force. These administrative officers are, in the higher grades, often elected and in the lower grades when appointed are not appointed by the judiciary nor are they under judicial control. The report to the National Economic League, to which I referred, states that even in one of the best administered of our courts, one which has an actual administrative organization, the Chicago Municipal Court, the administrative and clerical work costs more for each case than the purely judicial. The same thing is true in New York City. Judge William L. Ransom, in a recent address, gave some interesting statistics on this subject. In analyzing the

cost of from eight to ten million dollars a year of the judicial system in New York City he says:

> This is not due primarily to the salaries of judges. For example, in the Boroughs of Manhattan and the Bronx, out of the total cost of the administration of justice in the Supreme Court only 22 per cent represents the salaries of the judges of that court. In other words, the salaries of the justices of the Supreme Court in the Boroughs of Manhattan and the Bronx are not quite $1,100,000, while the salaries of the clerical force are nearly $1,300,000, and in addition to that there is a salary list of nearly $700,000 per year for the attendants of the courts. On the civil side of the Supreme Court in the Boroughs of Manhattan and the Bronx, the salaries of the judges are $660,000 a year. The salaries of their clerks are $774,000. The salaries of their stenographers are about $290,000, and the salaries of their attendants are nearly $660,000. . . . There has been built up a great unorganized and unintegrated body of subordinates, the volume of whose annual salaries substantially exceeds the salaries of the judges themselves so that in every case that is tried—for example, the Supreme Court of this state, within this county or the county of the Bronx—it costs the people of the county more for the attendants and clerks than it does for the judge who presides over the trial.

A badly organized business is always wasteful. I quote these figures regarding the administrative system of the courts to illustrate this fact. Under the judiciary law of New York—a thing of shreds and patches—the judges themselves have nothing to do with the salaries of these attendants or employes, and still less to say about the necessity of employing them. A considerable percentage of these employes are unnecessary. They neither assist the judges nor the litigants in judicial business. With a unified Supreme Court in New York, with actual control over judicial functions and administrative functions exercised by the court itself, and the so-called judiciary law of the state relegated to the junk heap, we might expect, in place of unnecessary clerks and attendants and with the money saved by their elimination, masters corresponding to the thirty-two masters who now serve in the English courts to the very great expedition of judicial business. The great need for judicial organization is of course in the large cities. Life there is complex; judicial machinery must be made adequate for the demands made upon it. When we consider the total lack of organization of courts in New York City, it is a wonder that conditions are not much worse than they are. Consider the situation.

First, look at the civil side. We begin with the Municipal Court, in which the rights of the poor are heard and determined.

The court has no organization; it has a nominal chief justice, who has no powers of any substantial kind; it has clerks who are substantially independent of the judges and can be removed only on charges filed with the appellate division of the Supreme Court, and after a trial as cumbrous as an impeachment. Its judges are chosen by election in separate districts. Some districts invariably elect incompetent judges of a low character; others, men of excellent standing and professional attainment. To give the public the benefit of the mixture the judges rotate from district to district. Their jurisdiction is limited; the calendars in some districts are so crowded that litigants have to spend two or three days of attendance before they can hope to be heard. In other districts, there is comparatively little to do. Each judge runs his own court to suit himself. The court has power to make minor rules of little importance, its rule-making power being circumscribed both by the act under which the court is created and by the great complicated Code of Civil Procedure, which still perplexes New York lawyers.

The next court to be considered is one which though called the City Court of the City of New York, sits only in the Borough of Manhattan, and performs such functions as are elsewhere performed by the County Courts in other counties embraced within the city. There is no logical reason for its existence as a separate court. It has a nominal chief justice who has no adequate powers and the rule-making function of the court is like that of the Municipal Court.

From these two courts appeals run to the so-called appellate term of the Supreme Court. Printed cases must be prepared on City Court appeals, while a typewritten copy of the record will do for the Municipal Court appeals to the same Appellate Court, composed of three Supreme Court judges, who change from month to month—a most unsatisfactory Appellate Court.

In counties other than Manhattan and the Bronx, we have County Courts, even less unified than the Municipal or City Courts. From these courts, appeals for no logical reason run not to the appellate term, but to the regular appeal division of the Supreme Court, to which appeals from the Supreme Court itself go. The Supreme Court itself—the highest court of original jurisdiction—is the only court having original equity powers, composed of twenty-eight original judges, having no chief justice, no power to make its own rules to meet its own practical requirements and dependent

upon the appellate division of the Supreme Court for rules—in other words, the Appeal Court makes the rules for the Trial Court. Instead of the Supreme Court judges being relieved, as the English judges are, by having procedural matters handled by masters, the Supreme Court judges must pass upon between sixty and seventy thousand motions, applications for orders and the like annually. They must daily spend half an hour at least of judicial time calling calendars, passing upon excuses for unreadiness and the like. Each justice is expected to hold court as though no other branch of the court existed. The result is, for example, that far more jurors are summoned to the parts trying jury cases than can possibly be used, all of which would be unnecessary if jurors were called not to one of these parts but to the Supreme Court itself and parcelled out to the various parts of the courts as needed. These Supreme Court judges rotate; they try equity cases one month, negligence cases another, contract cases another, with an occasional transfer to the trial of criminal causes or to duty as appeal judges in the appellate term. There is no specialization of function and no attempt at making experts in chosen branches of the law.

When one considers the organization of our local courts, which I have only partially and roughly outlined, the necessity for reorganization becomes obvious. We need a judicial system. We have over-developed the notion of judicial independence. We need to supplement it by the creation of a responsibility, of the judge to an organization, of which as an individual he forms a part. Back of the recall of judges, there remains a crudely expressed idea—the creation of an external responsibility to the people as a whole because there is lacking an internal responsibility, that of the judges to a judicial organization capable of effectively directing and disciplining them.

With all the reforms which have been made and which are in contemplation over matters of procedure and the like, we shall never have a fully efficient judiciary in the metropolitan district of New York until we have a unified system of courts of broad original jurisdiction, with branches to meet the convenience of litigants, unless we have for that court a responsible head, not only of its judicial but of its administrative work as well, with adequate power to assign justices to their work in accordance with their capacities and special fitness, with authority to discipline and direct clerks

and employes and to determine what employes the judicial system requires and where their services are wanted. This court must not be bound hand and foot by the present complicated Code of Civil Procedure. It should have power to make necessary rules, having the effect of law on matters of practice. This court should have power to appoint masters, with functions corresponding largely to those busily engaged today in the English courts of justice, who can consider practice applications and motions which today require an entirely unnecessary amount of time from lawyers and judges, pass accounts and make such investigations as the court may direct.

Until we have made clear to the public the necessity for these structural reforms and until with the aid of an enlightened public opinion we have modernized the organization of our courts, we shall not have attained, in full measure, an effective method of administering justice, or have made any appreciable reduction in the cost of litigation, or in the cost to the taxpayer of the judicial system.